

operated for the Government by a contractor, shall be scheduled as soon as possible but no later than one year after implementation of the system.

(b) Transferring a copy of the electronic records and any related documentation and indexes to the National Archives at the time specified in the records disposition schedule in accordance with instructions found in § 1228.270 of this chapter. Transfer may take place at an earlier date if convenient for both the agency and the National Archives and Records Administration.

(c) Establishing procedures for regular recopying, reformatting, and other necessary maintenance to ensure the retention and usability of electronic records throughout their authorized life cycle (see § 1234.28).

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a). This applies to the original version of the record that is sent or received on the electronic mail system and any copies that have been transferred to a recordkeeping system. See 36 CFR part 1228 for records disposition requirements.

(1) *Disposition of records on the electronic mail system.* When an agency has taken the necessary steps to retain the record in a recordkeeping system, the identical version that remains on the user's screen or in the user's mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record on the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping system along with all appropriate transmission data.

(2) *Records in recordkeeping systems.* The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the system are not scheduled, the agency shall follow the procedures at 36 CFR part 1228.

[55 FR 19218, May 8, 1990. Redesignated and amended at 60 FR 44641, 44642, Aug. 28, 1995; 66 FR 27028, May 16, 2001]

#### § 1234.34 Destruction of electronic records.

Electronic records may be destroyed only in accordance with a records disposition schedule approved by the Archivist of the United States, including General Records Schedules. At a minimum each agency shall ensure that:

(a) Electronic records scheduled for destruction are disposed of in a manner that ensures protection of any sensitive, proprietary, or national security information.

(b) Magnetic recording media previously used for electronic records containing sensitive, proprietary, or national security information are not reused if the previously recorded information can be compromised by reuse in any way.

(c) Agencies shall establish and implement procedures that specifically address the destruction of electronic records generated by individuals employing electronic mail.

[55 FR 19218, May 8, 1990. Redesignated and amended at 60 FR 44641, 44642, Aug. 28, 1995]

### PART 1236—MANAGEMENT OF VITAL RECORDS

#### Subpart A—General

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AUTHORITY: 44 U.S.C. 2104(a), 2904(a), 3101; E. O. 12656, 53 FR 47491, 3 CFR, 1988 Comp., p. 585.

SOURCE: 60 FR 29990, June 7, 1995, unless otherwise noted.

#### Subpart A—General

##### § 1236.10 Purpose.

This part prescribes policies and procedures for establishing a program for the identification and protection of vital records, those records needed by agencies for continuity of operations

before, during, and after emergencies, and those records needed to protect the legal and financial rights of the Government and persons affected by Government activities. The records may be maintained on a variety of media including paper, magnetic tape or disk, photographic film, and microfilm. The management of vital records is part of an agency's continuity of operations plan designed to meet emergency management responsibilities.

**§ 1236.12 Authority.**

Heads of agencies are responsible for the vital records program under the following authorities:

- (a) To make and preserve records containing adequate and proper documentation of the agency's organization, functions, policies, procedures, decisions, and essential transactions, and to furnish information to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities (44 U.S.C. 3101).
- (b) To perform national security emergency preparedness functions and activities (Executive Order 12656).

**§ 1236.14 Definitions.**

Basic records management terms are defined in 36 CFR 1220.14. As used in part 1236:

*Contingency planning* means instituting policies and procedures to mitigate the effects of potential emergencies or disasters on an agency's operations and records. Contingency planning is part of the continuity of operations planning required under Federal Preparedness Circulars and other guidance issued by the Federal Emergency Management Agency (FEMA) and Executive Order 12656.

*Cycle* means the periodic removal of obsolete copies of vital records and their replacement with copies of current vital records. This may occur daily, weekly, quarterly, annually or at other designated intervals.

*Disaster* means an unexpected occurrence inflicting widespread destruction and distress and having long-term adverse effects on agency operations. Each agency defines what a long-term adverse effect is in relation to its most critical program activities.

*Emergency* means a situation or an occurrence of a serious nature, developing suddenly and unexpectedly, and demanding immediate action. This is generally of short duration, for example, an interruption of normal agency operations for a week or less. It may involve electrical failure or minor flooding caused by broken pipes.

*Emergency operating records* are that type of vital records essential to the continued functioning or reconstitution of an organization during and after an emergency. Included are emergency plans and directive(s), orders of succession, delegations of authority, staffing assignments, selected program records needed to continue the most critical agency operations, as well as related policy or procedural records that assist agency staff in conducting operations under emergency conditions and for resuming normal operations after an emergency.

*Legal and financial rights records* are that type of vital records essential to protect the legal and financial rights of the Government and of the individuals directly affected by its activities. Examples include accounts receivable records, social security records, payroll records, retirement records, and insurance records. These records were formerly defined as "rights-and-interests" records.

*National security emergency* means any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States, as defined in Executive Order 12656.

*Off-site storage* means a facility other than an agency's normal place of business where vital records are stored for protection. This is to ensure that the vital records are not subject to damage or destruction from an emergency or disaster affecting an agency's normal place of business.

*Vital records* mean essential agency records that are needed to meet operational responsibilities under national security emergencies or other emergency or disaster conditions (emergency operating records) or to protect the legal and financial rights of the